**Questionnaire on article 13 of the Convention on the Rights of Persons with Disabilities**

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| Submission by Unia (Interfederal Centre for Equal Opportunities), Belgium*Uniais an interfederal public service, specialised in equal opportunities policy and non-discrimination.**Unia is responsible for assisting victims of discrimination based on different protected criteria (one of which is disability) by the anti-discrimination laws which are the transposition of the European directives 2000/43 and 2000/78.* *Unia is also responsible, as national independent mechanism, for promoting, protecting and monitoring the implementation of the Convention on the Rights of Persons with Disabilities (CRPD) in Belgium.*Contact person: Carole Van Basselaere, carole.vanbasselaere@unia.be |

1. Does your country have **laws, policies or guidelines on access to justice,** at any level of government, **which ensure persons with disabilities**, particularly women and children with disabilities:

a. **to participate in judicial and administrative proceedings** on an equal basis with others in their role as witness, juror, complainant, defendant or other, including through the provision of procedural and age-appropriate accommodations (please identify and share the text of those provisions);

* *In general*

The **Belgian antidiscrimination legislation** ensures protection against discrimination for persons with disabilities in the area of access to and supply of goods and services which are available to the public.[[1]](#footnote-2) Therefore access to justice is covered by the antidiscrimination legislation. The denial of reasonable accommodation amounts to discrimination.[[2]](#footnote-3) Authorities are obliged to provide reasonable accommodations for persons with disabilities in their role as witness, juror, complainant, defendant, …

* *Specific rules*

Beside the antidiscrimination legislation, Unia is **not currently aware of specific laws or rules** which ensure persons with disability to participate in judicial and administrative proceedings. For example, no time bound action plans are currently in place to make public buildings such as courts and police stations accessible in Belgium. These are often older buildings and they are not subject to the planning regulations governing accessibility.

Until 2016, a specific rule aimed to ensure the right to legal assistance for persons with disabilities who receive income substitution allowances. Fully free “secondary legal assistance” and legal aid were automatically available for those people. “Secondary legal assistance” means legal assistance to an individual in the form of a detailed legal opinion or legal assistance, whether or not in the context of formal proceedings, and assistance with a court action, including legal representation.

However, since 2016, a person who receives income substitution allowances for disabled people has to prove that he or she does not have adequate means of subsistence[[3]](#footnote-4). The person may receive legal aid only if the average of his combined resources does not exceed a certain threshold set by statute. Are included in the combined resources: cohabitant’s income, potential property income but also the integration allowance. However the integration allowance is intended to offset costs related to the disability.

Furthermore, even if is not strictly related to proceedings, an example can be given of a measure which helps deaf people and hard of hearing people to reach police services when they are victims of criminal acts: since 2015 the emergency call centers can also be reached by text messages for deaf and hard of hearing people[[4]](#footnote-5).

b. to have **individual legal standing** in all administrative and judicial procedures, including the right to be heard as part of their right to fair trial;

* *Legal capacity*

On 17 March 2013 a law reforming the regimes of incapacity and establishing a new protection status in conformity with human dignity was adopted. The law provides that all persons enjoy legal capacity, except when a judge has ruled them legally incapable. The judge who orders a protection measure concerning a person or a person’s property has to explicitly rule on the person's capacity to carry out certain acts. Are included in the acts concerning the person: action for marriage annulment, application for divorce, actions relating to filiation. Are included in the acts concerning the property: legal action.

If a person has been deprived of legal capacity with respect to certain acts, he or she will be either supported or represented by an administrator in order to carry out these acts. Nevertheless, the legislator has considered that a few acts are so personal that they can’t be subjected to supported decision-making or to representation. These acts include action for marriage annulment, application for divorce, actions relating to filiation.

The administrator who represents the person in justice as complainant must be explicitly mandated by the justice of peace (except for some acts concerning the property).

* *Confinement (‘Internement’)*

The “chamber of social protection”(“la chambre de protection sociale”) is the judicial body that rules on ways of enforcing sentences of persons held in confinement (placement, transfer, temporary absences,…).

At the first hearing before the “Chamber of social protection”, the law of 5 May 2014 on the confinement of persons[[5]](#footnote-6) provides that the person held in confinement is represented by his or her lawyer when medical-psychiatric issues related to his or her state are raised and it can be harmful to examine them in his or her presence.

c. to have access to **effective remedies** that are appropriately proportional to the right(s) infringed and which are tailored to their specific situation;

Unia is not currently aware of specific laws or rules in this matter.

d. to have effective **access to justice in the context of disasters, migration and asylum-seeking**, conflict and post-conflict situations and transitional justice, and formal or informal systems of customary, indigenous and community justice, among others.

Beside the general antidiscrimination legislation, Unia is not currently aware of specific laws in this matter.

1. Do you have examples from your country on:

a. how procedural and age-appropriate accommodations are provided and applied, including protocols or other guidelines;

According to Unia’s experience, accommodations for persons with disabilities are most of the time provided on a case-by-case basis. Usually there is no general protocol in order to facilitate the provision of reasonable accommodations. Example: in a civil case, a court arranged the time limits governing exchange of documents and submissions for a party who was seriously ill.

A brochure “Mieux approcher la surdité” (“How to approach deafness better”) has been developed to inform police officers who are in contact with deaf and hard of hearing people. The brochure contains advice and tools in order to help police officers to guarantee a quality of reception of deaf people.

b. training programmes on the right of access to justice for persons with disabilities for judges, lawyers, prosecutors, police, social workers, language and sign language interpreters, legal aid centres, other judicial and administrative bodies intervening in judicial or quasi-judicial instances;

* *Police*

Since 2005, Unia has been collaborating with the Belgian federal police (Equality and Diversity Department) under a cooperation agreement. This agreement applies to diversity training and support for projects of diversity management, included disability and provision of reasonable accommodation.

For further details, please refer to Unia’s annual report 2015 on the cooperation between Unia and the police[[6]](#footnote-7).

* *Judges* and *prosecutors*

Circular COL 13/2013 concerning discrimination and hate crime provides :

* instructions for a coherent policy concerning the prosecution of discrimination and hate crime;
* the appointment of reference magistrats and reference police officers;
* networking between the police, magistrats and Unia : Unia provides training to the reference magistrats and reference police officers.

c. education programmes on the right of access to justice for persons with disabilities for law students as well as in schools of social work, sign language interpretation, forensic science, psychiatry and psychology, among other relevant faculties; and

Unia is not currently aware of specific education programmes on the right of access to justice for persons with disabilities.

d. legal aid programmes, public and/or private, which include the right of access to justice for persons with disabilities in their practices, including the availability of support and liaison services for courts or other judicial or quasi-judicial instances.

Please refer to question 1.a.

1. Does your country have laws, policies and strategies to ensure the participation of persons with disabilities on an equal basis with others in the judiciary or other judicial or quasi-judicial instances, including in their role as judges, witnesses, jurors, lawyers or any other active party to judicial or quasi-judicial procedures?

Unia is not aware of any **specific laws or rules** in this matter beside the general Belgian antidiscrimination legislation. Please refer to question 1.a. The scope of the antidiscrimination legislation also includes employment, consequently persons employed within judicial or quasi-judicial instances are protected against discrimination on grounds of disability[[7]](#footnote-8).

1. Does your country monitor and collect disaggregated data with respect to access to judicial or quasi-judicial procedures concerning:

a. the participation of persons with disabilities in judicial or quasi-judicial procedures, including the number of complaints submitted, nature of complaints and outcomes;

Data with respect to the participation of persons with disabilities in judicial procedures are not collected.

Unia collects data concerning the complaints it receives regarding discrimination on the grounds of disability and violation of the CRPD. These data are published in Unia’s annual report.[[8]](#footnote-9) In addition, relevant jurisprudence and negotiated solutions are published on Unia’s website.[[9]](#footnote-10)

b. persons with disabilities obtaining remedies and the nature of those remedies, whether they are adequate, effective, prompt and appropriate, responding to their specific situation;

Unia collects data concerning the complaints it receives regarding discrimination on the grounds of disability and violation of the CRPD. These data are published in Unia’s annual report.[[10]](#footnote-11) In addition, relevant jurisprudence and negotiated solutions are published on Unia’s website.[[11]](#footnote-12)

c. persons with disabilities being convicted, the nature of their sentence, and whether they benefitted from safeguards of the right to fair trial on an equal basis with others; and

Unia collects data concerning the complaints it receives regarding discrimination on the grounds of disability and violation of the CRPD. These data are published in Unia’s annual report.[[12]](#footnote-13) In addition, relevant jurisprudence and negotiated solutions are published on Unia’s website.[[13]](#footnote-14)

d. the opening and conduct of impartial and independent investigations of human rights violations of persons with disabilities, particularly those relating to the right to life, liberty and security of the person, freedom from violence, abuse and exploitation, and freedom from torture or cruel, inhuman or degrading treatment or punishment.

Unia is not currently aware of specific data on this matter.

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1. Loi du 10 mai 2007 tendant à lutter contre certaines formes de discrimination, <http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2007051035&table_name=loi>, art. 5, 1° (scope of application of the law). [↑](#footnote-ref-2)
2. *Ibid*., art. 14 (obligation to provide reasonable accommodation). [↑](#footnote-ref-3)
3. Royal Decree of 18 december 2003 relating to « les conditions de la gratuité totale ou partielle du bénéfice de l'aide juridique de deuxième ligne et de l'assistance judiciaire » as amended by Royal Decree of 3 August 2016, art. 1, §2, 2°, <http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2003121833&table_name=loi> [↑](#footnote-ref-4)
4. See: <http://www.112.be/fr/sms>. [↑](#footnote-ref-5)
5. Loi du 5 mai 2014 relative à l’internement des personnes, M.B. du 9 juillet 2014, p. 52159, art. 30 : « la personne internée est représentée par son avocat lorsque des questions médico-psychiatriques en rapport avec son état sont posées et qu'il est particulièrement préjudiciable de les examiner en sa présence ». <http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=2014050511>. [↑](#footnote-ref-6)
6. <http://unia.be/fr/publications-et-statistiques/publications/rapport-annuel-2015-convention-entre-unia-et-la-police-federale> [↑](#footnote-ref-7)
7. Loi du 10 mai 2007 tendant à lutter contre certaines formes de discrimination, <http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2007051035&table_name=loi>, art. 5 1° (scope of application of the law) [↑](#footnote-ref-8)
8. <http://www.unia.be/fr/publications-et-statistiques/publications/rapport-annuel-2015-le-vivre-ensemble-mis-a-lepreuve> [↑](#footnote-ref-9)
9. <http://www.unia.be/fr/jurisprudence-alternatives> [↑](#footnote-ref-10)
10. <http://www.unia.be/fr/publications-et-statistiques/publications/rapport-annuel-2015-le-vivre-ensemble-mis-a-lepreuve> [↑](#footnote-ref-11)
11. <http://www.unia.be/fr/jurisprudence-alternatives> [↑](#footnote-ref-12)
12. <http://www.unia.be/fr/publications-et-statistiques/publications/rapport-annuel-2015-le-vivre-ensemble-mis-a-lepreuve> [↑](#footnote-ref-13)
13. <http://www.unia.be/fr/jurisprudence-alternatives> [↑](#footnote-ref-14)